THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.5634 OF 2006

Dated 20th September, 2007

Between:

A.H.N.Venkata Rao …Petitioner

And

The Commissioner of Income tax-I
And three others. …Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.5634 OF 2006

O R D E R (Per the Hon'ble Sri Justice Bilal Nazki):

Counter has been filed and we have heard learned counsel for the parties.

By this writ petition, an order dated 10-01-2006 passed by the first respondent refusing to waive interest on tax has been challenged. The application for waiver of interest was filed by the petitioner before the first respondent in terms of Section 220(2A) of the Income Tax Act, 1961 (for short "the Act"). Section 220(2A) of the Act lays down-

> "(2A) Notwithstanding anything contained in sub-section (2), the Chief Commissioner or Commissioner may reduce or waive the amount of interest paid or payable by an assessee under the said sub-section if he is satisfied that-
>
> (i) payment of such amount has caused or would cause genuine hardship to the assessee;
>
> (ii) default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee; and
>
> (iii) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

The Commissioner of Income Tax, in this case, has found that none of the conditions was present to exercise the power under Section 220 (2A) of the Act.

In the counter-affidavit, it has been stated that the tax, which was due from the petitioner for the year 1986-87, was ultimately paid in 2006. The only contention raised by the petitioner was that he was cooperative with the assessment and was not aware that the tax had to be paid.

In the counter-affidavit, it is stated that against the assessment orders, appeals were filed before the Commissioner of Income Tax (Appeals). Finally appeals were also filed before the Income Tax Appellate Tribunal against the order of Commissioner of Income-Tax (Appeals) which came to be disposed of by an *ex parte* order and the Tribunal in its order remarked-

> "though notice was issued and the appeals were posted for hearing on as may as 13 occasions the assessee did not attend. The appeals were therefore heard *ex parte*.....The appeals are dismissed".

The assessee had also filed a petition under Section 273A of the Act seeking waiver of interest charged under Section 139(8) and 271 of the Act before the Commissioner of Income Tax and the Commissioner of Income Tax remarked-

> "It is also seen from the records that the assessee has not cooperated with the department in the payment of taxes

and the installment facility granted was not availed of…"

This is not disputed by the petitioner that at one time he had also been granted the facility to pay the tax by way of installments, which he had not done. In this view of the matter, we do not think the order of the Commissioner of Income-Tax-I - the first respondent needs any interference by us.

The writ petition is misconceived and is accordingly dismissed. No order as to costs.

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Bilal Nazki,J

Dated 20th September, 2007

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Ramesh Ranganathan,J

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